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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-488

SEA-LAND SERVICE, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY MEMORANDUM

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Petitioner respectfully submits this brief Reply Memorandum to the new allegation raised by the United States that this case "also lacks prospective importance."[1] This case has important prospective significance.

Petitioner questions the right of the United States Court of Claims to remand a proceeding to any agency for factual findings[2] on a question of contract

[1] Brief for the United States in Opposition, No. 77-488, p. 4.

[2] Appendix D, pp. 1d, 2d.

interpretation, under a statute which makes findings of fact by the agency binding on the Court (in the absence of other findings),[3] and then to ignore those findings in interpreting the contract. This is the course which the Court of Claims followed here. The Court's decision, under these circumstances, is contrary to Wunderlich Act standards. The process at issue here applies to all future cases which the Court of Claims remands for findings of fact, and any future cases in which the Court refuses or fails to give effect to findings of fact of the department, agency or board entered on remand. Further this case raises issues that could apply generally to any cases which a court remands for specific findings.

Here the Court of Claims remanded the proceeding for two specific findings of fact[4] –

> "to determine whether the drastic increase in the cost of bunker fuel, on which plaintiff predicates this claim, was foreseen by plaintiff when it entered into the contract on July 1, 1970, or was reasonably foreseeable at that time or likely to arise during the contract period."

Appellant engaged in lengthy proceedings, including evidentiary hearings, and initial and reply briefs,[5] and obtained a favorable decision from the Armed Services Board of Contract Appeals (Board) on the two factual

[3] Wunderlich Act, 41 U.S.C. §321.

[4] Appendix D, pp. 1d, 2d.

[5] Appendix C, p. 3c. The Order of remand was May 31, 1974. (Appendix A, p. 9a). The case returned to the Court of Claims in 1976 and was decided in April 1977 (Appendix A, p. 1a).

issues remanded.[6] The Wunderlich Act makes these findings of fact final and conclusive on the Court of Claims unless the Court finds the decision of the agency or board fraudulent, capricious, arbitrary, so grossly erroneous as necessary to imply bad faith, or not supported by substantial evidence.[7] This point is well settled.[8] The decision of the Court of Claims subject to this Petition referred to the remand, but did not address the findings of the Board on remand in interpreting the contract,[9] as it was obliged to do.

Petitioner does not assert that the Court of Claims has a duty to remand cases. However, once the Court has done so and has requested specific findings on remand, it cannot then ignore those findings in its ultimate decision.

Thus the decision and decision-making process for which Petitioner seeks review apply to many future cases, which the Court of Claims remands for findings of fact, and which other courts may remand for appropriate findings. Accordingly, the case clearly has "prospective significance."

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December 23, 1977

[6] Appendix C, pp. 3c-4c, 40c-41c.

[7] 41 U.S.C. §321.

[8] United States v. Carlo Bianchi and Co., 373 U.S. 709 (1963); United States v. Utah Construction and Mining Co., 384 U.S. 394 (1966); S&E Contractors v. United States, 406 U.S. 1 (1972).

[9] Appendix A, pp. 9a-12a.